

Tentative Rulings for February 26, 2019
Departments 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

14CECG03920 *Ferrell v. Buckingham Property* (Dept. 503)

16CECG03149 *Peraza v. Walker-Lewis, Inc.* (Dept. 403)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

16CECG02149 *Williams v. FCA US LLC* is continued to Wednesday, May 1, 2019 at 3:30 p.m. in Dept. 403.

15CECG00541 *Culcasi v. Lucido*, defendant Samuel Lucido's motion for summary judgment is continued to Thursday, March 14, 2019 at 3:30 in Dept. 503.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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Tentative Ruling

Re: ***Matinzo v. Janda et al.***
Superior Court Case No. 17CECG01473

Hearing Date: February 26, 2019 (Dept. 403)

Motion: Compel defendant Janda to provide initial responses to form interrogatories-general, set one, form interrogatories-employment, set one, special interrogatories, set one, form interrogatories-general, set two, and request for production of documents, set one; deem request for admissions, set one, admitted; and for monetary sanctions

Tentative Ruling:

The court notes that the moving party scheduled 1 motion and paid for 1 motion. In actuality the moving papers consisted of a minimum of 3 motions combined into one set of papers. In the future the moving party must reserve the proper number of motions. Moving party shall pay an additional filing fee of \$120.00 to be due and payable to the court clerk within 30 days of service of the minute order by the clerk. (Gov. Code § 70617, subd. (a).)

To grant plaintiffs motion that the truth of the matters specified in the request for admission, set one, be deemed admitted as to defendant John P.S. Janda unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure sections 2033.210, 2033.220 and 2033.240. Code of Civil Procedure §2033.280.

To grant plaintiffs motions to compel defendant John P.S. Janda to provide initial verified responses to form interrogatories-general, set one, form interrogatories-employment, set one, special interrogatories, set one, form interrogatories-general, set two, and request for production of documents, set one. Code of Civil Procedure §§ 2030.290, subd. (b) and 2031.300, subd. (b). Defendant John P.S. Janda is to provide complete verified responses to all discovery set out above, without objection within 10 days after service of this order.

To grant plaintiff's motion for monetary sanctions. John P.S. Janda is ordered to pay \$580 in sanctions to Wagner, Jones, Kopfman & Artenian LLP within 30 days after service of this order.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM **on** 2/19/19 .
(Judge's initials) (Date)

Tentative Ruling

Re: ***Daniels v. Centex Homes***
Case No. 15 CE CG 01984

Hearing Date: February 26, 2019 (Dept. 403)

Motion: Cross-Defendant Talons Landscaping Development, Inc.'s
Motion for Determination of Good Faith Settlement

Tentative Ruling:

To grant cross-defendant Talons Landscaping's motion for good faith settlement. (Code Civ. Proc. § 877.6.)

Explanation:

Under Code of Civil Procedure section 877.6, "Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc. § 877.6(a)(1).)

"A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (Code Civ. Proc. § 877.6(c).)

"[T]he intent and policies underlying section 877.6 require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. [Citation.] Finally, practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate the settling defendant's liability to be.' [Citation.] The party asserting the lack of good faith, who has the burden of proof on that issue (§ 877.6, subd. (d)), should be permitted to demonstrate, if he can, that the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a 'settlement made in good faith' within the terms of section 877.6." (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.)

Here, Talons Landscaping has submitted an application that meets the basic requirements for a good faith settlement under *Tech-Bilt*. Talons' settlement payment will be \$5,400, which appears to be within the range of what a reasonable person would estimate the cross-defendant's liability to be. There are only nine homes affected by Talons' work, and Talons only performed work on the front yard landscaping, so its potential liability appears to be very limited. In any event, cross-defendant can be expected to settle for less than what it might have to pay if it were held liable at trial. (*Tech-Bilt*, *supra*, at pp. 499-500.) There are also several other defendants and cross-defendants who may share some of the liability. Talons has also submitted evidence that the settlement was the product of arms' length negotiations with the help of the special master, and that the settlement was not the product of fraud or collusion.

None of the other parties has filed opposition or made any attempt to present evidence that the settlement is not within the range of reasonableness, or that the settlement was not entered into in good faith. Therefore, the court intends to grant the order finding the settlement to be in good faith, and that it bars other claims for comparative negligence, contribution, or equitable indemnity.

Pursuant to CRC 3.1312 and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM on 2/21/19.
(Judge's Initials) (Date)

(2)

Re: ***In re Lawrence Moore***
Superior Court Number: 18CECG02685

Motion: Petition to Compromise Minor's Claim

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Issued By: JYH on 2/21/2019
(Judge's initials) (Date)

Tentative Ruling

Re: ***Oberg v. Cerda and consolidated action***
Superior Court Case No. 18CECG00718

Hearing Date: February 26, 2019 (Dept. 502)

Motion: City's motions to compel defendants Linda Cerda and Jamie Cerda to provide initial responses to form interrogatories, set one, and request for production of documents, set one, deem request for admissions, set one, admitted and for monetary sanctions
Bradley Oberg's motions to compel defendants Jamie Cerda and Linda Cerda to provide initial responses to form interrogatories, set one, and request for production of documents, set one, deem request for admissions, set one, admitted and for monetary sanctions
Bradley Oberg's motions to compel the defendants Jamie Cerda and Linda Cerda's attendance at deposition

Tentative Ruling:

The court notes that the City scheduled 2 motions and filed 2 sets of moving papers. In actuality each set of moving papers consisted of 3 motions combined into one set of papers. In the future the moving party must reserve the proper number of motions.

To grant City's motion that the truth of the matters specified in the request for admission, set one, be deemed admitted as to defendant Linda Cerda unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure sections 2033.210, 2033.220 and 2033.240. Code of Civil Procedure §2033.280.

To grant City's motions to compel defendant Linda Cerda to provide initial verified responses to form interrogatories, set one and request for production of documents, set one. Code of Civil Procedure §§ 2030.290, subd. (b) and 2031.300, subd. (b). Defendant Linda Cerda to provide complete verified responses to all discovery set out above, without objection within 10 days after service of this order.

To grant City's motion for monetary sanctions. Linda Cerda is ordered to pay \$165.00 in sanctions to the City of Fresno within 30 days after service of this order. Code of Civil Procedure §§ 2030.290, subd. (c), 2031.300, subd. (c) and 2033.280(b).

To deny City's motion that the truth of the matters specified in the request for admission, set one, be deemed admitted as to defendant Jaime Cerda.

To deny City's motions to compel defendant Jaime Cerda to provide initial verified responses to form interrogatories, set one and request for production of documents, set one.

To deny City's motion for monetary sanctions as to Jaime Cerda.

The court notes that Bradley Oberg scheduled 1 motion and filed 8 motions. The moving party must reserve the proper number of motions. In the future, motions filed in excess of the number properly set for hearing will be rejected.

To grant Bradley Oberg's motion that the truth of the matters specified in the request for admission, set one, be deemed admitted as to defendant Jamie Cerda unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure sections 2033.210, 2033.220 and 2033.240. Code of Civil Procedure §2033.280.

To grant Bradley Oberg's motions to compel defendant Jamie Cerda to provide initial verified responses to form interrogatories, set one and request for production of documents, set one. Code of Civil Procedure §§ 2030.290, subd. (b) and 2031.300, subd. (b). Defendant Jamie Cerda to provide complete verified responses to all discovery set out above, without objection within 10 days after service of this order.

To grant Bradley Oberg's motion for monetary sanctions. Jamie Cerda is ordered to pay \$592.50 in sanctions to Baradat & Paboojian, Inc. within 30 days after service of this order.

To deny Bradley Oberg's motion to compel the defendant Jamie Cerda's attendance at deposition. To deny Bradley Oberg's motion for monetary sanctions. CCP §2025.450(g)(1).

To grant Bradley Oberg's motion that the truth of the matters specified in the request for admission, set one, be deemed admitted as to defendant Linda Cerda unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure sections 2033.210, 2033.220 and 2033.240. Code of Civil Procedure §2033.280.

To grant Bradley Oberg's motions to compel defendant Linda Cerda to provide initial verified responses to form interrogatories, set one and request for production of documents, set one. Code of Civil Procedure §§ 2030.290, subd. (b) and 2031.300, subd. (b). Defendant Linda Cerda to provide complete verified responses to all discovery set out above, without objection within 10 days after service of this order.

To grant Bradley Oberg's motion for monetary sanctions. Linda Cerda is ordered to pay \$592.50 in sanctions to Baradat & Paboojian, Inc. within 30 days after service of this order.

To deny Bradley Oberg's motion to compel the defendant Linda Cerda's attendance at deposition. To deny Bradley Oberg's motion for monetary sanctions. CCP §2025.450(g)(1).

Explanation:

The moving papers reveal that the City did not properly serve the discovery or the motions on Jaime Cerda at his address of record.

The deposition of Jaime Cerda was properly noticed, no valid objections were served and the deponent failed to appear. However, when the deponent fails to attend the deposition the motion must be accompanied by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. CCP §2025.450(b)(2). The statement in the declaration of Kane at ¶16 is “[A]s of the filing of this motion, Defendant has not served any objections, nor provided any reason for his failure to appear.” This is not a proper CCP §2025.450(b)(2) statement. The declaration is insufficient as it fails to state that he contacted the deponent in any way to inquire about the nonappearance.

The deposition of Linda Cerda was properly noticed, no valid objections were served and the deponent failed to appear. However, when the deponent fails to attend the deposition the motion must be accompanied by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. CCP §2025.450(b)(2). The statement in the declaration of Kane at ¶6 is “[A]s of the filing of this motion, Defendant has not served any objections, nor provided any reason for her failure to appear.” This is not a proper CCP §2025.450(b)(2) statement. The declaration is insufficient as it fails to state that he contacted the deponent in any way to inquire about the nonappearance.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

[illegible]

(2)

Tentative Ruling

Re: **Yang et al. v. Henry et al.**
Superior Court Number: 16CECG00117

Hearing Date: February 26, 2019 (Dept. 502)

Motion: Petitions to Compromise Minors' Claims

Tentative Ruling:

To grant. Orders signed. Hearing off calendar.

Pursuant to Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling **DSB** **2-25-19**
Issued By: _____ on _____.
 (Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Ceeb Leej Vang, a minor by and through his
Guardian Ad Litem, Cha Meng Vang v. Graviela
Wash, Victor Garcia and Maribel Carrillo***
Superior Court Case No. 16CECG03328

Hearing Date: February 26, 2019 (Dept. 502)

Application: By Plaintiff for the entry of default judgment

Tentative Ruling:

To deny the application without prejudice.

Explanation:

Background

On November 8, 2014, the minor was bitten by a dog allegedly owned by Defendants Wash, Garcia and Carrillo. The incident occurred at 4338 E. Geary Avenue in Fresno, CA. On October 14, 2016, the minor through his Guardian Ad Litem filed a Complaint alleging a causes of action for negligence and strict liability pursuant to Civil Code § 3342 and seeking punitive damages.

The original Complaint named only Wash as a Defendant. She filed an Answer on May 2, 2017. On August 23, 2017, Plaintiff named Defendant Garcia as Doe 1. On September 26, 2017, Plaintiff named Defendant Carrillo as Doe 2.

On April 20, 2018, Plaintiff filed an ex parte application seeking permission to serve Garcia and Carrillo via publication in the Mountain Press. The application was granted and the order was signed on April 27, 2018. Plaintiff submitted proof of service via publication on June 11, 2018. On August 13, 2018, default was entered against Garcia and Carrillo. On August 29, 2018, Defendant Wash was dismissed with prejudice.

Merits

On December 18, 2018, Plaintiff submitted a request for default judgment and supporting documents. However, these documents were rejected for filing by the Clerk's Office. As a result, the application for entry of default judgment must be denied without prejudice. Plaintiff is advised to resubmit the documents required by CRC Rule 3.1800 and Local Rule 2.1.14.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

DSB

2-25-19

Issued By: _____ **on** _____.

(Judge's initials)

(Date)

Tentative Rulings for Department 503

(5)

Tentative Ruling

Re: ***Culcasi v. Lucido***
Superior Court Case No. 15CECG00541

Hearing Date: February 26, 2019 (Dept. 503)

Motion: By Plaintiff for summary adjudication of the first, second and third causes of action

Tentative Ruling:

To deny on the ground that Plaintiff has not met the requirements of Code of Civil Procedure section 437c(f)(1). It has been determined that "[t]here is no obligation on the opposing party . . . to establish anything by affidavit unless and until the moving party has by affidavit stated facts establishing every *element* . . . necessary to sustain a judgment in his favor." (See *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468 (emphasis in original, internal quotations omitted).) Given that the moving party has not met her burden, it is not necessary to examine the opposition or the reply. It is also not necessary to rule upon evidentiary objections.

Explanation:

Requirements for Summary Adjudication

Summary adjudication must completely dispose of the cause of action, defense, damages claim or duty issue to which it is directed. (Code Civ. Proc., § 437c(f)(1).) For example, damages are an element of a breach of contract cause of action. Thus, when the damages amount is disputed, plaintiff cannot obtain summary adjudication on the liability issue and leave the damages issue for resolution at trial. (*Paramount Petroleum Corp. v. Sup.Ct. (Building Materials Corp. of America)* (2014) 227 Cal.App.4th 226, 243—"A plaintiff can obtain summary adjudication of a cause of action only by proving each element of the cause of action entitling the party to judgment on that cause of action." (Internal quotes omitted).)

Elements of Financial Abuse of an Elder

CACI No. 3100 "Essential Factual Elements" states:

[Name of plaintiff] claims that [[name of individual defendant]/ [and] [name of employer defendant]] violated the Elder Abuse and Dependent Adult Civil Protection Act by taking financial advantage of [him/her/[name of decedent]]. To establish this claim, [name of plaintiff] must prove that all of the following are more likely to be true than not true:

1. That [[name of individual defendant]/[name of employer defendant]'s employee] [insert one of the following:]

[[took/hid/appropriated/obtained/ [or] retained] [name of plaintiff/decedent]'s property;]

[or]

[assisted in [taking/hiding/appropriating/obtaining/ [or] retaining] [name of plaintiff/decedent]'s property;]
2. That [name of plaintiff/decedent] was [65 years of age or older/a dependent adult] at the time of the conduct;
3. That [[name of individual defendant]/[name of employer defendant]'s employee] [[took/hid/appropriated/obtained/ [or] retained]/assisted in [taking/hiding/appropriating/obtaining/ [or] retaining]] the property [for a wrongful use/ [or] with the intent to defraud/ [or] by undue influence];
4. That [name of plaintiff/decedent] was harmed; and
5. That [[name of individual defendant]'s/[name of employer defendant]'s employee's] conduct was a substantial factor in causing [name of plaintiff]'s harm.

[One way [name of plaintiff] can prove that [[name of individual defendant]/[name of employer defendant]'s employee] [took/hid/appropriated/obtained/ [or] retained] the property for a wrongful use is by proving that [[name of individual defendant]/[name of employer defendant]'s employee] knew or should have known that [his/her] conduct was likely to be harmful to [name of plaintiff/decedent]. [[Name of individual defendant]/[Name of employer defendant]'s employee] [took/hid/appropriated/obtained/ [or] retained] the property if [name of plaintiff/decedent] was deprived of the property by an agreement, gift, will, [or] trust [, or] [specify other testamentary instrument] regardless of whether the property was held by [name of plaintiff/decedent] or by [his/her] representative.]

The instruction is based upon Welfare and Institutions Code section 15610.30 "[f]inancial abuse," which states:

(a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

Notably, Welfare and Institutions Code section 15610.30 does not set forth the measure of damages. But, Welfare and Institutions Code section 15657.5, "[d]efendant liable for financial abuse; attorney's fees and costs; limits on damages; punitive damages; statement to be included in judgment," states:

(a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney's fees and costs. The term "costs" includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, and where it is proven by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, in addition to reasonable attorney's fees and

costs set forth in subdivision (a), compensatory damages, and all other remedies otherwise provided by law, the limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any punitive damages may be imposed against an employer found liable for financial abuse as defined in Section 15610.30. This subdivision shall not apply to the recovery of compensatory damages or attorney's fees and costs.

(d) Nothing in this section affects the award of punitive damages under Section 3294 of the Civil Code.

(e) Any money judgment in an action under this section shall include a statement that the damages are awarded based on a claim for financial abuse of an elder or dependent adult, as defined in Section 15610.30. If only part of the judgment is based on that claim, the judgment shall specify what amount was awarded on that basis.

(Emphasis added.)

In the instant motion, Plaintiff does not address the damages element of the cause of action. (See Separate Statement of Undisputed Facts.) Instead, she focuses solely on liability. But, when moving for summary adjudication of the entire cause of action for financial abuse of an elder, all elements must be addressed. (See *Paramount Petroleum Corp.*, supra.) As a result, Plaintiff has not met her burden of proof pursuant to Code of Civil Procedure section 437c(p)(2). The motion for summary adjudication will be denied.

Elements of an Action to Quiet Title

The elements of a cause of action to quiet title are set forth in Code of Civil Procedure section 761.020, which states:

The complaint must be verified and must include all of the following:

(a) A description of the property that is the subject of the action. In the case of tangible personal property, the description must include its usual location, and in the case of real property, the description must include both its legal description and any street address or common designation.

(b) The title of the plaintiff as to which a determination is sought and the basis of the title. If the title is based on adverse possession, the complaint must allege the specific facts constituting the adverse possession.

(c) The claims adverse to the title of the plaintiff against which a determination is sought. [If the plaintiff admits the validity of an adverse claim, the complaint must so state. (Code Civ. Proc., § 762.060(c).)]

(d) The date as of which the determination is sought. If the determination is sought as of a date other than the date the complaint is filed, the complaint must include a statement of the reasons why a determination as of that date is sought.

(e) A prayer for the determination of the title of the plaintiff against the adverse claims.

(Emphasis added.)

Code of Civil Procedure section 764.010, "[e]xamination into and determination of plaintiff's title; prohibition against default judgment; rendition of judgment," states:

The court shall examine into and determine the plaintiff's title against the claims of all the defendants. The court shall not enter judgment by default but shall in all cases require evidence of plaintiff's title and hear such evidence as may be offered respecting the claims of any of the defendants, other than claims the validity of which is admitted by the plaintiff in the complaint. The court shall render judgment in accordance with the evidence and the law.

(Emphasis added.) Accordingly, a plaintiff must prove his or her case in an evidentiary hearing with live witnesses and any other admissible evidence. [*Nickell v. Matlock* (2012) 206 Cal.App.4th 934; see also *Harbour Vista LLC v. HSBC Mortgage Services, Inc.* (2011) 201 Cal.App.4th 1496.]

By the same token, summary judgment/summary adjudication law turns on issue finding rather than issue determination. (*Diep v California Fair Plan Ass'n* (1993) 15 Cal.App.4th 1205, 1207.) The court does not decide the merits of the issues, but merely discovers, through the medium of affidavits or declarations, whether there are issues to be tried and whether the parties possess evidence that demands the analysis of a trial. (*Melamed v City of Long Beach* (1993) 15 Cal.App.4th 70, 76; *Molko v Holy Spirit Ass'n* (1988) 46 Cal.3d 1092, 1107; *Schworer v Union Oil Co.* (1993) 14 Cal.App.4th 103, 110.) In short, the motion is not a substitute for a bench trial.

Thus, an action to quiet title is unsuitable for summary judgment or summary adjudication. The motion for summary adjudication of the second cause of action will be denied.

Cancellation of Instrument

Civil Code section 3412, "[g]rounds for cancellation," states:

A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a

person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

However, cancellation of instrument is a remedy not a cause of action. Civil Code section 3412 is set forth in Article 6 "Cancellation of Instruments" of Chapter 2 "Specific Relief" of Title 3 "Specific and Preventive Relief" of the Civil Code. It is akin to a common suit in old chancery practice and is purely equitable. (See *Corrigan v. Stiltz* (1965) 233 Cal.App.2d 381, 387.) Plaintiff's citation to *U.S. Bank National Assn. v. Naifeh* (2016) 1 Cal.App.5th 767 is unavailing. In that case, the matter was appealed after a bench trial. The decision does not apply to a motion for summary adjudication. In any event, a remedy cannot be the subject of summary adjudication. (See Code Civ. Proc., § 437c(f)(1).) The motion will be denied.

It has been determined that “[t]here is no obligation on the opposing party . . . to establish anything by affidavit unless and until the moving party has by affidavit stated facts establishing every *element* . . . necessary to sustain a judgment in his favor.” (See *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 468 (emphasis in original, internal quotations omitted).) Given that the moving party has not met its burden, it is not necessary to examine the opposition or the reply. It is also not necessary to rule upon evidentiary objections.

As noted by the Fifth District Court of Appeal: “Section 437c is a complicated statute. There is little flexibility in the procedural imperatives of the section, and the issues raised by a motion for summary judgment (or summary adjudication) are pure questions of law. As a result, section 437c is unforgiving; a failure to comply with any one of its myriad requirements is likely to be fatal to the offending party.” (See *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, 1607.)

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KAG on 2/25/19.
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Culcasi v. Lucido***
Superior Court Case No. 15CECG00541

Hearing Date: February 26, 2019 (Dept. 503)

Motion: By Defendant Samuel Lucido to bifurcate the trial

Tentative Ruling:

To deny on the ground that it was not timely filed. (See Code Civ. Pro. § 1005(b).)

Explanation:

According to Odyssey, Defendant's motion was filed on February 15, 2019. Code of Civil Procedure section 1005(b) states:

Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, and if the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 16-day period of notice before the hearing shall be increased by two calendar days. Section 1013, which extends the time within which a right may be exercised or an act may be done, does not apply to a notice of motion, papers opposing a motion, or reply papers governed by this section. All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days, and all reply papers at least five court days before the hearing.

The court, or a judge thereof, may prescribe a shorter time.

Therefore, the instant motion has not been timely and will be denied.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order

(2)

Tentative Ruling

Re: ***The State of California v. Carter et al. and consolidated action***
Superior Court Case No. 16CECG03991

Hearing Date: February 26, 2019 (Dept. 503)

Motion: Compel defendant Kingsburg Orchards, Inc. to provide initial responses to requests for production of documents, set one.

Compel defendant Lori Jackson, individually and as trustee of the Michael Jackson Family Trust of 1990, and Lori Jackson dba Mike Jackson Farms to provide initial responses to requests for production of documents, set one.

Compel defendant Michael Jackson, individually and as trustee of the Michael Jackson Family Trust of 1990, and Michael Jackson dba Mike Jackson Farms to provide initial responses to requests for production of documents, set one.

Tentative Ruling:

The court notes that the moving party scheduled one motion. In actuality, the moving papers consisted of 10 motions combined into one set of papers as clearly shown in the notice of motion. In the future, the moving party must reserve the proper number of motions.

To grant plaintiff's motions to compel defendant Kingsburg Orchards, Inc. to provide initial responses to requests for production of documents, set one, including the set propounded in Case No. 16CECG03991 and the set propounded in prior Case No. 16CECG04000 before consolidation. (Code of Civ. Pro. § 2031.300, subd. (b).) Defendant Kingsburg Orchards, Inc. to provide complete verified responses to all discovery set out above, without objection, within 10 days after service of this order.

To grant plaintiff's motions to compel defendant Lori Jackson to provide initial responses to requests for production of documents, set one, including the set propounded on her individually and as trustee of the Michael Jackson Family Trust of 1990 and as dba Mike Jackson Farms in Case No. 16CECG03991 and the sets propounded on her individually and as trustee of the Michael Jackson Family Trust of 1990 and as dba Mike Jackson Farms in prior Case No. 16CECG04000 before consolidation. Defendant Lori Jackson to provide complete verified responses to all discovery set out above, without objection, within 10 days after service of this order.

To grant plaintiff's motions to compel defendant Michael Jackson to provide initial responses to requests for production of documents, set one, including the set propounded on him individually and as trustee of the Michael Jackson Family Trust of 1990 and as dba Mike Jackson Farms in Case No. 16CECG03991 and the sets propounded on him individually and as trustee of the Michael Jackson Family Trust of

1990 and as dba Mike Jackson Farms in prior Case No. 16CECG04000 before consolidation. Defendant Michael Jackson to provide complete verified responses to all discovery set out above, without objection, within 10 days after service of this order.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KAG **on** 2/22/19.
 (Judge's initials) (Date)

(28)

Tentative Ruling

Re:

Cervantes v. Ruiz

Superior Court Case No. 17CECG00099

Hearing Date:

February 26, 2019 (Dept. 503)

Motion:

By Defendant Eddie Ruiz Demurring to the Third Amended Complaint of Robert Cervantes

Tentative Ruling:

To treat the demurrer as a motion to strike the punitive damages claims in the sixth and eighth causes of action.

To grant the motion to strike the punitive damages claims, without leave to amend, unless Plaintiff requests oral argument and makes a proffer that he can validly allege facts to support the punitive damages claims.

Explanation:

Defendant has filed a purported demurrer to the Third Amended Complaint. Although the documents contain a memorandum of points and authorities and a notice, it does not appear that Defendant has filed a separate demurrer. The notice states that the "demurrer" is made on the ground that the Third Amended Complaint "is uncertain, fails to state sufficient facts to support a recognizable cause of action and fails to properly allege facts which substantiate his prayer for punitive damages."

The demurrer appears to challenge the sixth cause of action for "Conversion" and the eighth cause of action for "Breach of the Covenant of Good Faith and Fair Dealing," as well as the claim for punitive damages. However, the memorandum of points and authorities, although discussing the general rules for demurrers, spends the majority of the papers discussing the viability of the punitive damages claim, and does not discuss whether the Third Amended Complaint alleges the elements of either the conversion claim or the breach of the covenant of good faith and fair dealing claim.

Generally speaking, a party may only demur to the sufficiency of an entire cause of action and not to a prayer for relief. (*Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1561-62 (demurrer only tests the sufficiency of the factual allegations and not the relief suggested in the prayer); *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1167 (demurrer lies only to the entire cause of action).) Therefore, the demurrer could be overruled in its entirety.

However, Plaintiff did not raise this defect in the opposition. Instead, the parties briefed the issue of whether the punitive damages prayers are properly alleged. Therefore, in the interests of justice, and on the Court's own motion, the Court will treat the demurrer as a motion to strike the punitive damages claims in the sixth and eighth causes of action.

A motion to strike can be used to: “(a) [s]trike out any irrelevant, false, or improper matter inserted in any pleading”; or “(b) [s]trike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (Code Civ. Proc. §§ 431.10, subd.(b); 436, subd.(a).) A court will “read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth.” (*Clauson v. Sup.Ct. (Pedus Services, Inc.)* (1998) 67 Cal.App.4th 1253, 1255.)

A motion to strike may lie where the facts alleged do not rise to the level of “malice, fraud or oppression” required to support a punitive damages award. (*Turman v. Turning Point of Central Calif.* (2010) 191 Cal.App.4th 53, 63.) Mere conclusory allegations will simply not suffice. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.)

Punitive damages are governed by Civil Code section 3294, which states:

(a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

(c) As used in this section, the following definitions shall apply:

(1) “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.

(3) “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

First, as to the punitive damages for breach of the covenant of good faith and fair dealing, Defendant is correct that the cause of action is “just another garden variety breach of contract for which only contract damages may be recovered.” (*Thompson Pacific Const., Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 541 (internal quotations and citations omitted).) Punitive damages cannot be recovered for a breach of contract under California law in this context. (*Frazier v. Metropolitan Life Ins. Co.* (1985) 169 Cal.App.3d 90, 106-07.) Therefore, the motion to strike the prayer for punitive damages for breach of the covenant of good faith and fair dealing is granted. The motion is granted without leave to amend unless Plaintiff requests oral argument and can provide some legal or factual basis for the punitive damages for this cause of action.

Second, as to the punitive damages for the conversion claim, Defendant is also correct that the mere allegation of an intentional tort, standing alone, is insufficient to justify the allegation of punitive damages. (E.g., *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894.) In the opposition, Plaintiff pointed to no allegations in the Third Amended Complaint that would justify the award of punitive damages, and no such allegations appear in the pleading itself. The Third Amended Complaint alleges that Defendant converted the proceeds from the sale of the premises to Defendant's own use. (TAC ¶158.) Plaintiff also alleges that Defendant's conduct was "despicable" and done with the intent to cause Plaintiff injury. (TAC ¶¶62-65.) However, nowhere does Plaintiff allege any facts that would tend to support a claim for punitive damages. Therefore, the motion to strike punitive damages from the cause of action for conversion is granted. Because of the pending trial date and because, were leave to amend be granted, Plaintiff would be filing a Fourth Amended Complaint, leave to amend is denied unless Plaintiff requests oral argument and provides a proffer of valid factual allegations that would support his claim for punitive damages as to this cause of action.

Thus, the demurrer is treated as a motion to strike, and the motion to strike is granted as to the twelfth prayer for relief, and paragraphs 62-65 and 93-96 of the Third Amended Complaint. Unless Plaintiff requests oral argument and makes a sufficient proffer of supporting facts, leave to amend is denied, and Defendant shall have ten (10) court days from the date of service of this order in which to file a response to the Third Amended Complaint.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KAG on 2/22/19.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Rabobank, N.A. v. Triple V Dairy et al.***
Superior Court Case No. 17CECG03829

Hearing Date: February 26, 2019 (Dept. 503)

Motion: Receiver John Curan's Motion for Order Approving
Receiver's Verified First and Final Report of Administration
and Accounting

Tentative Ruling:

To grant. All available cash and other assets remaining in the Receivership Estate, with the exception of the \$150,000 Workers Compensation Reserve as described in Section 5A of the Accounting, and \$6,730.29 to be paid to Western Milling LLC, be distributed to plaintiff Rabobank. Within five days of service of the order, Receiver shall submit to this court a proposed order consistent with this ruling.

Discussion:

The Motion for Order Approving Receiver's Verified First and Final Report of Administration and Accounting provides a detailed and thorough discussion and summary of receiver John Curan's administration of the Receivership Estate. The motion is granted, and Final Report and Accounting approved, with clarification of a few issues as set forth below.

There remains \$1,426,988.34 to pay Lone Star Dairy's creditors, one of whom is Western Milling, who is owed \$500,000 on the note and open account (LaBounty Dec. ¶ 7). If the receiver pays the \$184,887.96 debt that Lone Star owes to Triple V, there will be no funds remaining to pay Western Milling. If the Lone Star debt to Triple V is not paid by the receiver, there will remain \$6,730.29 that could go to Western Milling. As Rabobank points out, there is ambiguity in the receivership order, in that Triple V and Lone Star are part of the Receivership Estate, the receiver was authorized to collect all debts owing from account debtors, but is prohibited from paying pre-existing debts of either entity.

Given that the receivership order prohibits the receiver from paying pre-existing debts of Lone Star, and no party sought to amend the receivership order in this respect, the court will apply the terms of the order and direct that the Lone Star debt to Triple V not be paid. Therefore, the receiver shall pay the remaining \$6,730.29 to Western Milling.

The court grants the receiver's request in Section 5A to retain \$150,000 from the Triple V Receiver Account to pay Receiver's fees, costs, legal fees and costs, to cover expenses for a potential workers' compensation claim that may be made against the Receivership Estate (explained in § V.E). This reserve shall be distributed to Rabobank upon the receiver either satisfying, defending or otherwise resolving any claim that is

